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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RACHEL GASSO, on behalf of herself and all consumers similarly situated, Plaintiffs, v. ALLSTAR MARKETING GROUP, INC., ALLSTAR MARKETING GROUP, LLC, ALLSTAR MARKETING CORP., and DOES 1-25, inclusive, Defendants.	CASE NO. 3:07-cv-02235 BTM (BLM) DECLARATION OF LEE T. PATAJO, ESQ. IN SUPPORT MOTION FOR REMAND TO STATE COURT AND MOTION FOR COSTS ON GROUNDS OF DEFECTIVE REMOVAL **[Per chambers, no oral argument unless requested by the Court]** Hearing Date: January 25, 2008 Time: 11:00 a.m. Courtroom: 15, 5th Floor Dept.: Courtroom of the Honorable Barry Ted Moskowitz

1. I, the undersigned, am an attorney authorized to practice law in the State of California. I am one of the attorneys of record herein for plaintiff/moving party, RACHEL GASSO, individually and on behalf of all others similarly situated. As such, I have personal knowledge of the facts set forth below and, if called upon to do so, could and would testify competently thereto under oath.

2. On August 27, 2007, Plaintiffs' counsel sent correspondence to the President of Allstar Marketing Group, LLC outlining violations by defendant of California Civil Code § 1750, *et seq.* (the Consumer Legal Remedies Act). Specifically, Allstar Marketing Group, LLC was informed of

its illegal conduct pursuant to the Act and duly advised that pursuant to the California Civil Code, Allstar Marketing Group, LLC must agree to provide the aggrieved parties the appropriate remedies within 30 days of receipt of the correspondence. A true and correct copy of Plaintiff's correspondence to Defendant dated August 27, 2007 is attached hereto as Exhibit 1.

3. On September 24, 2007, Allstar Marketing Group, LLC's counsel forwarded correspondence that stated that Allstar Marketing Group, LLC was unaware of any misrepresentation or deceptive representation with respect to Autocool and saw "no reason to agree to the injunctive relief, refunds, and other relief demanded." A true and correct copy of Defendant's correspondence to Plaintiff dated September 24, 2007 is attached hereto as Exhibit 2.

4. On or about October 26, 2007, Plaintiff Rachel Gasso, on behalf of herself and all consumers similarly situated, served upon the Defendants a summons and complaint, which were filed in the Superior Court of the State of California, County of San Diego, on October 17, 2007. A true and correct copy of Plaintiff's Summons and Complaint is attached hereto as Exhibit 3.

5. This instant action is a civil consumer protection action based on violations of California law, namely the Unfair Competition Law (California Business and Professions Code §§ 17200 *et seq.*), the False Advertising Law (California Business and Professions Code §§ 17500 *et seq.*), and the Consumer Legal Remedies Act (California Civil Code §§ 1750 *et seq.*). Plaintiffs have not subjected defendants to any substantive claims based on federal law. (*See* Complaint, attached hereto as Exhibit 3, ¶¶ 6, 11, and 12.)

6. The Complaint is brought on behalf of the California general public, with the right to amend for a national class reserved for a future date. (*See* Complaint, attached hereto as Exhibit 3, ¶¶ 6, 11, and 12.)

7. I reviewed defendant Allstar Marketing Group, LLC's Declaration of Henny Karreman in Support of Removal Jurisdiction, signed under penalty of perjury. A true and correct copy of the Declaration of Henny Karreman is attached hereto as Exhibit 4.

8. Mr. Karreman's Declaration states:

> I have reviewed records pertaining to the direct response sales of Auto Cool products from inception of the sale of these products (2006) through October 31, 2007, including data on returned merchandise. This data is provided on a regular ongoing basis to Allstar by its fulfillment center. The data shows that, for this period of time and limited to sales made to addresses in the United States, net of returns, Allstar's revenues from consumer purchases in the direct response channel (including shipping and handling) totaled $14,458,746, and an additional $134,346 in sales taxes were collected from direct response customers. Thus, the value of plaintiff's restitution claim is at least $14,593,092.

(*See* ¶ 6 of the Declaration of Henny Karreman in Support of Removal Jurisdiction, attached hereto as Exhibit 4.)

9. Mr. Karreman's Declaration makes no attempt to segregate the claims of California consumers and instead provides that for the period of time and limited to sales made to addresses in the United States, net of returns, Allstar's revenues from consumer purchases in the direct response channel totaled $14,458,746, and an additional $134,346 in sales tax collected from direct response customers. Defendant concludes that the value of plaintiff's restitution claim is at least $14,593,092. (*See* ¶ 6 of the Declaration of Henny Karreman in Support of Removal Jurisdiction, attached hereto as Exhibit 4.)

10. I reviewed the United States Census Bureau website to determine the population of California and the United States of America, respectively. I am informed and believe that the most recent statistics regarding California and the United States of America's populations on the website are for the year of 2006. In 2006, the population of California was 36,457,549, and the population of the United States was 299,398,484. A true and correct copy of the U.S. Census Bureau State & County

Quick Facts page regarding California's population, located at http://quickfacts.census.gov/qfd/states/06000.html, is attached as Exhibit 5.

11. From the information I obtained from the United States Census Bureau website, I personally calculated California's percentage of the United States population. 36,457,549 (California's population) divided by 299,398,484 (United States population) is approximately 12.2% . Given the fact that the precise quotient encompasses either a prolonged or repeated decimal, I rounded the figure up to the nearest thousandth, i.e. 0.122 or 12.2%.

12. I personally multiplied $14,593,092 (the amount in dollars that defendant valued plaintiff's restitution claim) by 12.2% (California's percentage of United States population). The resulting product of these two multiples is $1,780,357.224. Rounding up this figure to the nearest hundredth provides the following: $1,780,357.23.

13. Given the aforementioned limitations of the analysis performed by Henny Karreman, the figure of $1,780,357.23 better interprets the statistical information Henny Karreman has provided. Plaintiff believes that this calculation reliably extrapolates the appropriate conclusion from the information Henny Karreman has presented under penalty of perjury. This figure is well below the amount in controversy required by 28 U.S.C. § 1332(d)(2), i.e. $5,000,000.

14. Moreover, defendant concedes that plaintiff's complaint is grounded in California law. In its Notice of Motion and Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, attached hereto as Exhibit 6, defendant states:

> It is well-established, however, that the consumer protection statutes under which the lawsuit is purportedly brought have no "force or operation beyond the boundaries of the state,"[1] and may not be applied to non-residents of California without an appropriate nexus to California.
>
> Footnote 1: "Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214, 222, 85 Cal.Rptr.2d 18 (1999)."

(Defendant's Notice of Motion and Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, p. 3, lines 11-14)

Defendant states that it is "well-established" that the violations of California law alleged have no force and effect outside of California (See Exhibit 6, Defendant's Notice of Motion and Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, p. 3, lines 11-14), yet argues that there are nationwide damages of $14,593,092 (*See* ¶ 6 of the Declaration of Henny Karreman in Support of Removal Jurisdiction, attached hereto as Exhibit 4.) and that "Plaintiffs seek restitution of all monies paid for Auto Cool products by members of a putative nationwide class without any limitation. . ." (*See* Defendant's Notice of Removal, ¶ 10.) Plaintiff has never intended the Complaint to encompass all U.S. citizens or seek restitution of all monies paid therefrom. If Defendant would have telephoned our office, we would have so stipulated.

15. As a result of defendant's defective removal to this court, my office has incurred and will incur reasonable costs and attorney's fees in connection with this motion and requests an award under 28 U.S.C. 1447(c).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: December 18, 2007

Lee T. Patajo

LEE T. PATAJO